

APR 28 2003

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Mary K. Toth et al.

Examiner: Reginald Alexander

Serial No.: 09/483,039

Group Art Unit: 1761

Filed: January 18, 2000

Docket No.: 5212USA (G180.122.101)

Title: ATTACHABLE SNACK FOOD CONTAINER

**DECLARATION UNDER 37 C.F.R. §1.131**

Assistant Commissioner for Patents  
Washington, D.C. 20231

**RECEIVED**

APR 30 2003

OFFICE OF PETITIONS

Dear Sir/Madam:

I, Arne H. Brauner, declare as follows:

1. I am an employee of General Mills, Inc. and reside at 1512 Fairfield Road South Minnetoka, Minnesota 55305.

2. I and Mary K. Toth are the named co-inventors of the subject matter described and claimed in the above-identified U.S. Patent Application Serial No. 09/483,039, filed January 18, 2000.

3. I make this declaration on my behalf and on behalf of Mary K. Toth. Ms. Toth is a former employee of General Mills, Inc. Ms. Toth is unavailable to execute this declaration as established in the Statement of Facts in Support of the Unavailability of an Inventor under 37 C.F.R. 1.47(a), which accompanies this Declaration. The last known address of Ms. Toth is 8182 Lawndale Lane North, Maple Grove, Minnesota 55311.

4. I understand that I make this Declaration in response to the Office Action mailed February 4, 2003 and in support of the patentability of the claims of U.S. Patent Application Serial Number 09/483,039.

5. This Declaration under 37 C.F.R. §1.131 is made in response to the rejection of claims 1-16, 18-34, 36-41, and 43-48 under 35 U.S.C. §102(a), and the rejection of claims 17, 35, and 42 under 35 U.S.C. §103(a), based upon Patent Cooperation Treaty (PCT) Application of

Ferraro et al., publication number WO 99/26847, entitled "A Food Container," as the sole or primary reference. PCT Application WO 99/26847 was published June 3, 1999. Thus, for purposes of the February 4, 2003 Office Action, June 3, 1999 is the first date that PCT Application WO 99/26847 is available for use as prior art.

6. Prior to June 3, 1999, the publication date of PCT Application WO 99/26847 as cited by the Examiner above, Ms. Toth and I conceived the above-identified and claimed invention. As factual evidence of our conception prior to June 3, 1999, attached hereto and incorporated by reference herein, is Brauner Exhibit A.

7. Brauner Exhibit A is a confidential document of General Mills, Inc. In particular, Brauner Exhibit A is a copy of a portion of Invention Record 5212, which Ms. Toth and I submitted to the Patent Section of the Law Department of General Mills, Inc. Invention Record 5212 was signed by Ms. Toth on January 20, 1999 and marked as received by the Law Department of General Mills, Inc. on February 2, 1999. The first page of Brauner Exhibit A describes the subject matter of the of the present application and information regarding the origination of the invention. The second page of Brauner Exhibit A is a detailed drawing of the present invention dated January 14, 1999. Invention Record 5212, i.e. Brauner Exhibit A, fully supports that the claimed invention of the present application was conceived prior to June 3, 1999.

8. After conceiving the claimed invention of the present application, Ms. Toth and I diligently filed U.S. Patent Application No. 09/483,039, as described in Paragraphs 9- 14 below.

9. Ms. Toth and I submitted Invention Record 5212 to the Patent Section of the Law Department of General Mills, Inc. The Invention Record 5212 was received by the Law Department of General Mills, Inc. on February 2, 1999 as noted in Brauner Exhibit A.

10. Invention Record 5212 was reviewed by the Law Department of General Mills,

Inc. John A. O'Toole, In-House Counsel for General Mills, Inc., forwarded a copy of Invention Record 5212 to the law firm of Dicke, Billig, & Czaja, P.L.L.C requesting preparation of a U.S. Patent Application based upon Invention Record 5212. Dicke, Billig, & Czaja, P.L.L.C. is now located at Fifth Street Towers, 100 South Fifth Street, Suite 2250, Minneapolis, MN 55402 and specializes in patent, trademark, and copyright law.

11. Timothy A. Czaja, registration number 39,649, of Dicke, Billig, & Czaja, P.L.L.C. prepared a first draft of the present application, based upon Invention Record 5212, and forwarded a copy via fax to John O'Toole, Ms. Toth, and me on October 26, 1999.

12. Following inventor and in-house review of the first draft of the present application, a copy of the first draft of the present application including inventor comments was received by Dicke, Billig, & Czaja on December 3, 1999.

13. Timothy A. Czaja reviewed and incorporated the inventor comments to the application of the present invention. On December 9, 1999, Timothy A. Czaja sent a copy of the revised application of the present invention to Annette Frawley of the Patent Section of the Law Department of General Mills, Inc.

14. The revised application was reviewed by personnel of General Mills, Inc. On January 18, 2000, the present application, U.S. Patent Application No. 09/483,039, was timely filed with the U.S. Patent and Trademark Office (U.S.P.T.O.).

15. It is therefore respectfully submitted that the present application claims an invention that was conceived prior to June 3, 1999 and diligently filed with the U.S.P.T.O. Thus, the Ferraro et al. PCT Application with publication number WO 99/26847 should be removed as a reference under 35 U.S.C. §§ 102(a) and 103(a).

**Declaration Under 37 C.F.R. § 1.51**

Applicant: Mary K. Toth et al.

Serial No.: 09/483,039

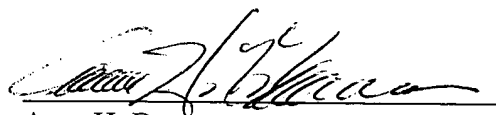
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16. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or patent issued thereon.

  
Arne H. Brauner

04/21/03  
Date